IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 437 OF 1999.

Idappa Ashanna Awale,
Convict No.C-10162,
Yerwada Central Prison,
Pune- 411 006. ..Appellant
(Orig.accused)

V/s.

State of Maharashtra ..Respondent.

Shri M.K. Kocharekar, advocate appointed for the appellant-accused.

Mrs. P.H. Kantharia, A.P.P. for the Respondent-State.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 12TH OCTOBER, 2004.

ORAL JUDGMENT (**PER ANOOP V. MOHTA, J.**)

. The appellant-accused has committed murder of his 3 years old son, Master Adilingappa. Therefore, he was accordingly, chargesheeted and tried by the Sessions Judge, Pune. This is an appeal against the order of conviction under Section 302 of Indian Penal Code and sentence to suffer imprisonment and other related orders.

2. The Complainant, Lingappa Awale, who is the wife of the appellant-accused, married 4 years before the date of incident. The deceased son was born out of the

wedlock. There were frequent quarrels between these two. On 20th April, 1997, at about 7 p.m., the appellant quarrelled with the complainant over money, as she refused to give the same. The appellant in anger insisted for the custody of his son. The complainant refused and resisted the same and the appellant in an anger, told that the son does not belong to him. The appellant therefore, threatened her, to kill the son. The complainant on the next date 21/4/1997, left the house at 8 a.m. for work along with her mother. At about 5 p.m. her cousin brother, Anjan Palle informed the complainant, that appellant-husband took their son at about 3 p.m. from the house and murdered him near the stone quarry behind Indiranagar hutment area. The dead body taken initially to the police station was lateron shifted to Nirmala Hospital. The complainant proceeded to the hospital where the dead body was lying with a plastic strip rolled around the neck of the deceased son, Adilingappa. The complaint was recorded by the police in Marathi, as per the interpretation of Telgu language given by the cousin brother of the complainant. The offence was registered under section 302 of Indian Penal Code against the appellant. After the inquest panchanama, the dead body was referred to

the post-mortem examination. The police prepared the panchanama of the scene of offence and recorded the statement of the witnesses. The clothes of the accused, as well as, the clothes of the deceased were attached under the panchanama. The charge-sheet was explained to the accused. He pleaded not guilty. His defence was that on the date of incident, his son Adilingappa followed him and fell into the quarry. Some ladies however, tried to save the boy but in vain and he died. The appellant stated that his wife had involved him falsely. The prosecution has examined in all 10 witnesses. There was no evidence led by the defence. Based on the material, as well as, testimonies of the witnesses, the appellant was convicted.

3. Heard the learned Counsel for the appellant, as well as, learned A.P.P. for the respondent. We have gone through the testimonies of all the witnesses, as well as, the record.

4. There is no substantial dispute or challenge to the death of the boy, as the same has been supported by P.W.6, Dr. Milind Sonawane. Based on the supported post-mortem examination report, the homicidal death of

the deceased son is duly proved by the prosecution. According to the medical officer also, the injuries noticed by him on the person of the deceased, were possible due to rolling strip of plastic, which was shown to him. He has also opined, that the boy died due to asphyxia, as a result of strangulation. P.W.1 also deposed that he saw that the accused tying the plastic strip around the neck of the boy and putting him into the water of the quarry. P.W.2, Gomati Rajkumar has also deposed that when they rushed towards the quarry, the boy was not with the accused and the accused on seeing them re-entered into the grass.The appellant-accused was caught by the witness, Praveen. The dead body was removed from the clay. The panch witness also supported the marks around the neck and plastic strip rolled around the neck of the boy. The death of the boy was not disputed by the appellant, except that according, to his statement, the boy died due to fall in the clay. The above medical report, as well as, prosecution case of homicidal death read with the corroborative evidence of P.W. 1 and P.W. 2, shows that the appellant had raised false and wrong defence. This itself shows his guilt and guilty mind.

5. The above proved and substantially corroborated prosecution story, based on the testimony of P.W. 1, Praveen Abhange and P.W. 2, Gomati Rajkumar, who were the independent witnesses. They saw that the appellant was going along with the boy towards the quarry and after some time the accused returning from the quarry alone. Therefore, they rushed to catch the accused and also removed the body of the deceased from the clay.

6. It is clear from the prosecution case that there were frequent quarrels between the complainant and the appellant. The appellant was unemployed, therefore, he used to demand money from the complainant, The appellant had threatened her on the night before the incident. Even though, P.W. 4, Narsamma Annapavali, declared hostile but the complainant's own statement and testimony about the frequent quarrel cannot be over looked. One of the element of the motive of the appellant to kill his own son, appears to be that the complainant told him that the deceased was not his son. P.W. 5, Chandrappa, the father of the complainant however, supported the complainant's, specially about the demand of money and custody of the boy. After going through the record, we find that prima facie the

testimony of P.Ws.3,4, and 5 supports the prosecution case and complaint by the complainant P.W. 3. Therefore, the motive as proved cannot be overlooked.

7. P.W.1, Praveen has claimed to be an eye witness to the incident but the Investigating Officer did not support the said case. The testimony of P.W.1, Praveen was shaky, still it proved the case of the prosecution that one person tying the plastic strip around the neck of the small boy and then threw the boy in the water. He has deposed that they took that man to the police station. He has further deposed that one lady took out the body of the deceased from the lake. He identified the accused before the Court. However, in his statement he could not mention that he saw the person at 2.00 p.m tying plastic strip around the neck of the boy. But excluding this contradiction rest of his testimony cannot be overlooked, as the same has been corroborated by the other witnesses. His testimony further proves the presence of the appellant, as well as, the deceased at the relevant time near the lake. The defence of the appellant itself supports the case of the prosecution that his son drowned and died in the lake. P.W.2, Gomati has also named the other ladies, who were present

at the relevant time, around 2 to 2.30 p.m. She has identified the accused as well as, the clothes. She saw that the boy was not with the appellant, when he was returning from the lake. The appellant immediately ran towards the opposite side of the quarry into the grass and came out from the other side of the lake. The appellant was caught by Praveen. They searched for the boy. They lifted the boy from the clay. At that time the plastic strip was tied around the kneck of the boy.They came out of the quarry with the boy. The body of the boy was taken to the police station and then the police took the boy to the Nirmala Hospital. This testimony has remained intact in the cross-examination. The learned Judge, according to us, has rightly convicted the appellant, based on these material, as well as, the testimonies of the witnesses on the record.

8. Even though, as contended, there was no eye witness to the fact that the accused had tied plastic strip around the neck at the relevant time and buried the deceased into the water of the stone quarry, still in view of the evidence, there remaines no doubt that the appellant was carrying the boy in his arm at the relevant time. The deceased was last seen with the

appellant. The statement by the appellant shows, that his defence was false. This itself shows that the accused, and no one else had committed the murder of his own son. According to us prosecution has proved beyond reasonable doubt, that the appellant committed the said offence.

9. The prosecution case cannot be thrown out, merely because the complainant was recorded in Marathi, even though she did not know Marathi. The fact cannot be overlooked, that his cousin brother had interpreted in the vernacular language for the police. The complaint Exh.8 was recorded accordingly with the assistance of the interpreter. Therefore, such complaint cannot be overlooked to discard the prosecution case, as narrated in the complaint, and as, proved by the testimonies of the other witnesses. There is no reason to disbelieve the complaint, as well as, supporting independent witnesses, including P.W. 10, Investigating Officer. He could not be shattered in cross-examination by the defence on material aspects of the case.

10. In view of the above discussion, we see that the

impugned judgment is within the frame work of law, as well as, the record, need no interference. There is no perversity in the order of conviction and sentence. There is no circumstance or any material pointed out to show any leniency to the appellant in the present case. There is no merit in the appeal. The judgment and order is maintained.

11. Therefore, the appeal is dismissed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]